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Supreme Court, U.
FILED

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1971**

JUN 16 1972

MICHAEL RODAK, JR., C

No. 1082

**REUBIN O'D. ASKEW, et al.,
Appellants,**

vs.

**THE AMERICAN WATERWAYS
OPERATORS, INC., et al.,
Appellees.**

**On Appeal from the District Court of the United States
for the Middle District of Florida**

**BRIEF OF THE STATE OF MICHIGAN AS AMICUS
CURIAE IN SUPPORT OF REVERSAL**

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Dated: June 15, 1972



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AUTHORITIES CITED

CASES:

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SECONDARY SOURCES

Newspapers and Magazines

Newsweek, February 17, 1969, p. 33,
June 16, 1969, p. 60 4

The Detroit News, June 5, 1972, p. 1 5

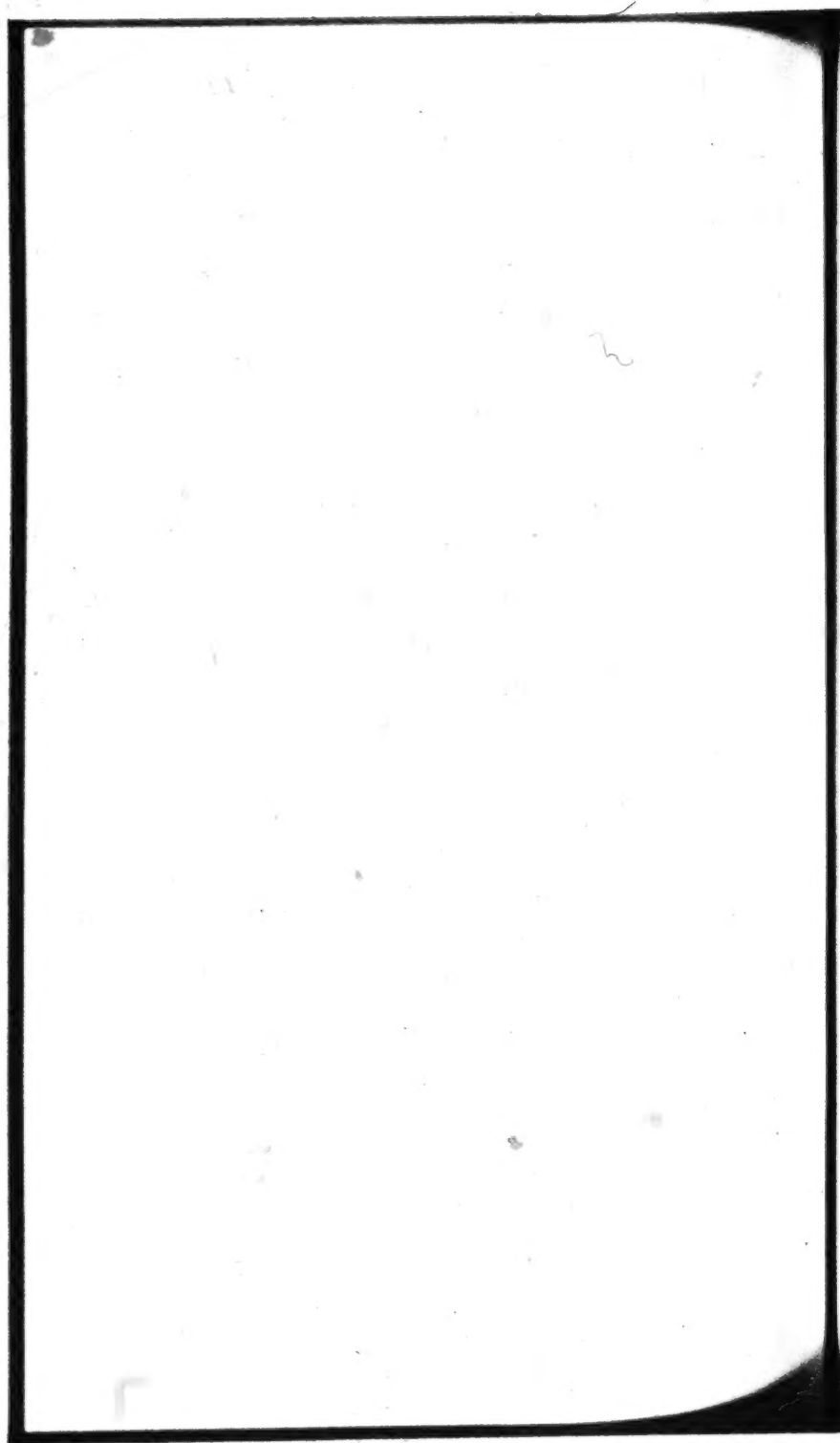
The Detroit Free Press, June 6, 1972, p. 1 5

LAW REVIEWS

McCoy, "Oil Spill Control,"
40 Geo Wash L Rev 97, 106 (1971) 6

BOOKS

Encyclopedia Americana, Vol XIX, p. 18 (1960) —	2
Gilmore and Black, The Law of Admiralty, 119, 283 —————	8
Greenwood's Guide to Great Lake Shippers, (April, 1972) —————	5
Ludwigson, Oil Pollution at Sea, Oil Pollution: Problems and Policies, 13 —————	4
Michigan Manual, 1971-72, p. 1 —————	2



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INTEREST OF AMICUS

The name "Michigan" is a simplification of Indian syllables which together mean "monstrous lake" or "vast body of water." Indeed, Michigan abounds with water resources; it is truly a "water wonderland". The State of Michigan has 3,177 miles of shoreline, more than any other state in the Union, except Alaska. Additionally, Michigan covers 38,575 square miles of the Great Lakes. Within the state, there are 11,037 inland lakes. The length of the courses of major rivers in Michigan is 5,499 miles; in addi-

tion, there are an estimated 30,000 miles of tributaries. Michigan, then, is truly a "monstrous lake".^[1]

Because of the unique water resources which Michigan possesses, Michigan has long been a leader in the enactment of legislation designed to protect natural water resources from pollution. For example, Michigan has enacted the Water Pollution Control Act of 1970, being MCLA 323.331 et seq. and MSA 3.533 (201) et seq., which has as one of its objectives the regulation of the disposal of oil and sewage from watercraft.^[2]

One of the key provisions of the Water Pollution Control Act of 1970 is section seven of the Act.^[3] Section seven reads as follows:

"Sec. 7. (1) A person owning, operating or otherwise concerned in the operation, navigation or management of a watercraft operating on the waters of this state shall not discharge or permit the discharge of oil or oily wastes from the watercraft into or onto the waters of this state if the oil or oily wastes threaten to pollute or contribute to the pollution of the waters or adjoining shorelines or beaches.

(2) The owner or operator of any watercraft who, whether directly or through any person concerned in the operation, navigation or management of the watercraft, discharges or permits or causes or contributes

[1]

See, *Encyclopedia Americana*, Vol XIX, p 18 (1960) and *Michigan Manual*, 1971-72, p 1.

[2]

A complete copy of the text of the Michigan Water Pollution Control Act of 1970 is set out as an appendix to this Brief.

[3]

MCLA 323.337; MSA 3.533 (207).

to the discharge of oil or oily wastes into or onto the waters of this state or adjoining shorelines or beaches shall immediately remove the oil or oily wastes from the waters, shorelines or beaches. *If the state removes the oil or oily wastes which were discharged by an owner or operator, the watercraft and the owner or operator are liable to the state for the full amount of the costs reasonably incurred for its removal.* The state may bring action against the owner or operator to recover such costs in any court of competent jurisdiction."

[MCLA 323.337; MSA 3.533 (207), emphasis supplied.]

This provision which became effective January 1, 1971 represents one of the most important steps taken by the State of Michigan in the continuing struggle against the pollution of our lakes, streams, and rivers.

Because of Michigan's vital concern with the preservation and protection of its vast water resources and because of points of similarity between the Florida statute under review in this case and the Michigan Water Pollution Control Act in terms of oils spills, we view the outcome of this litigation with deep concern. We are convinced that the ruling of the United States District Court for the Middle District of Florida, if upheld by this Court, would have a very damaging effect on the efforts of the State of Michigan to regulate oil discharges into its waters and to place the cost of removing these discharges on the polluter.

The State of Michigan, therefore, respectfully files this brief as amicus curiae pursuant to Rule 42 of the Revised Rules of this Court.

ARGUMENT

I

A COMPREHENSIVE LEGISLATIVE SCHEME WHICH PLACES THE COST OF REMOVING AND PREVENTING OIL DISCHARGES SQUARELY ON THE POLLUTER MAXIMIZES THE EFFECTIVENESS OF POLLUTION LAWS AND IS RESPONSIVE TO PUBLIC POLICY.

Oil pollution is one of the most highly visible and aesthetically appalling forms of water pollution. Furthermore, the ugly spector of oil pollution manifests itself in many diverse forms.

For a state like Florida, two recent technological developments in the oil industry have exacerbated the oil spill problem in recent years. The first technological development is the supertanker. Admittedly, the supertanker can carry large quantities of oil at a low unit cost. The supertanker, however, is very difficult to maneuver and so simply constructed, that when a simple accident takes place, ten or even hundreds of *tons* of oil can escape easily. See, Ludwigson, *Oil Pollution at Sea, Oil Pollution: Problems and Policies*, 13. A second major source of oil pollution is blow-out from undersea oil wells. The most notorious offshore drilling episode began six miles off the coast of Santa Barbara, California on January 28, 1969. Oil bubbled out of control at a rate of 21,000 gallons a day for some 12 days. Even after the plugging of the original leak, hundreds of gallons of oil continued to escape from the seabed. See, *Newsweek*, February 17, 1969, p 33; June 16, 1969, p 60.

Although Michigan does not presently experience the supertanker problem or the blow-out from undersea oil

wells problem, Michigan still faces a serious menace from oil pollution to its waters. There are, for example, an unbelievable 487,099 motor boats presently registered in the State of Michigan;[4] each of these vessels is capable of oil discharge. Furthermore, there are 59 tankers operating on the Great Lakes.[5] Hundreds of other commercial vessels which operate on the Great Lakes, including ocean going tankers, further increases the potential in Michigan for oil discharges.[6] Since the bulk of Michigan's population lives along the shoreline and draws its water supply from the Great Lakes, oil pollution poses a very serious problem to Michigan citizens.[7]

In view of the severity of the oil spill problem and in view of the many ways in which an oil spill may take place, every coastal state must be able to enact a legislative scheme which is tailored to deal with its own particular water pollution ailments. Turning to the Florida situation, it must be

[4]

This figure comes from the official registry which is compiled by the Michigan Department of State.

[5]

See, *Greenwood's Guide to Great Lake Shippers*, (April, 1972).

[6]

Note, *Greenwood's Guide to Great Lake Shippers*, (April, 1972) lists 487 fleet vessels operating in the Great Lakes.

[7]

At the time this brief was being prepared for delivery to the printer, on June 5, 1972, a collision of two steamships occurred in the St. Clair River at Port Huron, Michigan. One of the ships, the "Sydney E. Smith, Inc.", immediately sank to the bottom of the river with 49,000 gallons of "Bunker C" fuel oil. It is unknown at the time of this writing whether this oil will escape into the river; if it does, Coast Guard officials are quoted as saying that it may not be possible to contain the oil, due to fast-moving currents. The resulting damage to Michigan beaches and a wildlife preserve on Harsen's Island could be substantial. *The Detroit News*, June 5, 1972, p 1; *The Detroit Free Press*, June 6, 1972, p 1.

submitted that to approach any meaningful effectiveness, pollution laws must impose liability without fault. The history in Florida is a glaring example of the need for absolute liability. Actually, Florida for several years has had a typical statute imposing liability for negligence only upon operators physically aboard an offending vessel at the time injury or damage occurs. Fla Stat Ann 371.52 (Supp 1971-72). Yet to hold the captain or other crew members of a tanker liable without placing the shipowner under commensurate liability would be futile in serious oil spill cases. Even if an owner could be reached, he would still have numerous maritime defenses available. See, McCoy, "Oil Spill Control," 40 Geo Wash L Rev 97, 106 (1971).

Michigan has also designed its laws to maximize their effectiveness in light of Michigan's own particular pollution problems. The goal of Michigan law is to protect its beaches and waters. Under the Michigan Water Pollution Control Act of 1970, *supra*, the owner or operator of a watercraft is fully liable to the State of Michigan for the amount of costs reasonably incurred by the State in the removal of an oil discharge from the waters and beaches, if the owner or operator does not immediately remove the oil or oily wastes.

Finally, both the Michigan law and the Florida law are in accord with public policy. The citizen pays a heavy price for every disastrous oil spill; this price should not be increased to include the cost of prevention and clean-up. Any oil spill in Florida or Michigan, for instance, brings a serious and substantial potential for havoc to the ecology, to tourist business, and to the health and welfare of the citizens of both states. The cost of polluting, therefore, should be on the polluter and not on the citizen-taxpayer.

II

THE FLORIDA STATUTE HERE INVOLVED DOES NOT CONFLICT WITH EITHER THE WATER QUALITY IMPROVEMENT ACT OF 1970 OR WITH MARITIME LAW.

Neither the Constitution nor any federal statutes preclude States from passing laws which directly affect admiralty matters; indeed, a considerable body of state law in the admiralty area has long existed. See, McCoy, "Oil Spill Control," 40 Geo Wash L Rev 97.102. The only requirement for a state statute in the admiralty area is that it must supplement rather than conflict with general maritime law. See, *Southern Pacific Co v Jenson*, 244 US 205 (1917).

The Florida Oil Spill Prevention and Pollution Control Act of 1970, Fla Stat Ann Sec 376 (Supp 1971-72), is not in conflict with the Water Quality Improvement Act of 1970, 33 USC 1161 et seq. The oil spill provisions of the 1970 Federal Act establish liability only to the federal government and such liability falls between ordinary negligence and liability without fault:

"Except where an owner or operator can prove that a discharge was caused solely by (A) an Act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act of omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, *such owner or operator of any vessel from which oil is discharged in violation of . . . this section shall, notwithstanding any other provision of law, be liable to the United States Government . . .*"

(33 USC 1161 (f), emphasis supplied.)

The Florida act, on the other hand, is designed to compensate the State of Florida on an absolute liability standard. Therefore, the Florida act is merely complimentary rather than in serious conflict with the Water Quality Improvement Act.

The Florida Oil Spill Prevention and Pollution Control Act of 1970 is, furthermore, not in conflict with general maritime law. Traditionally, general maritime law has imposed liability without fault. See, Gilmore and Black, *The Law of Admiralty*, 283. Since the middle ages members of a ship's crew, injured or otherwise incapacitated under specified conditions, have been entitled to "maintenance and cure" without any showing of negligence. See, Gilmore and Black, *The Law of Admiralty*, 119. Furthermore, general maritime law recognizes and imposes absolute liability as indicated, but not specifically with respect to oil pollution. The Florida act merely seeks to fill this gap in the general maritime law.

CONCLUSION

THE DECISION OF THE DISTRICT COURT SHOULD BE REVERSED AND THE FLORIDA OIL SPILL PREVENTION AND POLLUTION CONTROL ACT OF 1970 SHOULD BE DECLARED CONSTITUTIONAL IN ALL RESPECTS.

Respectfully submitted,

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